



INTERIOR BOARD OF INDIAN APPEALS

Estate of Josephine Isabelle Pease Russell

32 IBIA 27 (01/30/1998)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
4015 WILSON BOULEVARD
ARLINGTON, VA 22203

ESTATE OF JOSEPHINE ISABELLE
PEASE RUSSELL

: Order Affirming Decision
:
: Docket No. IBIA 97-4
:
: January 30, 1998

Appellant Ramona B. Russell Realbird seeks review of an Order Denying Rehearing entered in the estate of Decedent Josephine Isabelle Pease Russell on August 7, 1996, by Administrative Law Judge Keith L. Burrowes. The denial of rehearing let stand Judge Burrowes' May 15, 1996, Order Approving Will and Decree of Distribution. IP BI 04A 92.

On May 16, 1991, Decedent executed a document entitled "Codicil to the Last Will and Testament of Josephine P. Russell." Decedent died on May 20, 1991. There is no dispute that the codicil was executed with the formalities necessary for a testamentary document, or that, when the codicil was executed, Decedent had testamentary capacity and was not acting under undue influence. There is also no dispute that no will was found to which the codicil was an addendum.

As she did during the original probate proceeding and in her Petition for Rehearing, Appellant argues on appeal that a codicil cannot be recognized as a testamentary instrument in the absence of an underlying will. The Board has carefully considered Appellant's arguments, the arguments of the proponents of the codicil, the cases upon which both sides rely, and Judge Burrowes' May 15, 1996, Discussion, Findings of Fact and Conclusions of Law. As did the parties, the Board found little guidance on this question in general legal sources. However, the Board finds nothing in Federal Indian probate law that precludes the probate of a testamentary document, even though termed a codicil and even though disposing of less than all of the decedent's estate, as long as that document is executed with all of the formalities required by 43 C.F.R. § 4.260 and presents a disposition of the included property which is understandable without reference to an earlier testamentary document. Such determinations must be based on the particular facts of each case.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, Judge Burrowes' May 15, 1996, Order Approving Will and August 7, 1996, Order Denying Rehearing are affirmed.

//original signed

Kathryn A. Lynn
Chief Administrative Judge

//original signed

Anita Vogt
Administrative Judge